

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

\* \* \*

FREDERICK LAVELLE PAINE,

Petitioner,

v.

RENEE BAKER, et al.,,

Respondents.

Case No. 2:00-cv-01082-MMD-VCF

ORDER

On January 17, 2007, this Court entered an order staying this action to allow Frederick Lavelle Paine, petitioner, to exhaust his state remedies for all his claims. (Dkt. no.112.) In the course of the state exhaustion proceedings, petitioner's death sentence was vacated. *Paine v. State*, 281 P.3d 1208, 2009 WL 3571290 (Nev. October 20, 2009) (unpublished). According to petitioner, a new sentence was imposed on June 20, 2012. On December 13, 2012, petitioner filed a motion to lift the stay (dkt. no. 137), which was opposed by the respondents on timeliness grounds (dkt. no. 138).

On January 2, 2013, petitioner filed a notice that he is withdrawing his motion. (Dkt. no. 140.) In that notice, petitioner states:

. . . While it was unclear at the time that the motion to vacate the stay was filed whether state habeas proceedings would be initiated, and information received from state counsel indicated that they would not be, counsel has since confirmed that in fact a state habeas petition in connection with the June 20, 2012, sentencing is in the process of being drafted and will be filed prior to the June 20, 2013 deadline. . . .

*Id.*, p.2.

1 Under Nev. Rev. Stat. § 34.726, petitioner has one year from the entry of his  
2 amended judgment of conviction to file a petition that challenges the validity of his  
3 sentence. Accordingly, petitioner's state court proceedings have yet to be concluded.  
4 Thus, respondents' timeliness argument is without merit; and, these proceedings shall  
5 continue to be held in abeyance.


6 IT IS THEREFORE ORDERED that, pursuant to the notice of withdrawal filed by  
7 the petitioner (dkt. no. 140), petitioner's motion to vacate stay and reopen habeas  
8 corpus proceeding (dkt. no. 137) is DENIED as moot. The proceedings herein shall  
9 remain STAYED and further proceedings shall be held in ABEYANCE pending  
10 petitioner's exhaustion of state court remedies.

11 IT IS FURTHER ORDERED that petitioner shall file a status report describing the  
12 status of his state court litigation on or before June 15, 2013, and then every six (6)  
13 months thereafter (December 15, 2013; June 15, 2014; December 15, 2014; etc.)  
14 during the stay of this action.

15 IT IS FURTHER ORDERED that following the conclusion of petitioner's state  
16 court proceedings, petitioner shall, within thirty (30) days, make a motion to lift the stay.

17 IT IS FURTHER ORDERED that this action shall be subject to dismissal upon a  
18 motion by respondents if petitioner does not comply with the time limits in this order, or  
19 if he otherwise fails to proceed with due diligence during the stay imposed pursuant to  
20 this order.

21  
22 DATED THIS 4<sup>th</sup> day of January 2013.

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26 MIRANDA M. DU  
27 UNITED STATES DISTRICT JUDGE  
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